

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRENDA WHITE-WILKERSON,

Plaintiff,

v.

BYRON ANTHONY AND
TYSON FOODS, INC.
Defendants.

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CIVIL NO. 4:18-cv-18-00663
JURY

INDEX OF EXHIBITS TO DEFENDANTS' NOTICE OF REMOVAL

Pursuant to Local Rule 81 of the United States District Court for the Southern District of Texas, Defendants, Byron Anthony and Tyson Foods, Inc., hereby attach the following documents:

- (1) All executed process in the case:

See *Exhibit "1"* attached hereto.

- (2) Pleadings asserting causes of action, e.g., petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings;

See *Exhibit "2"* attached hereto.

- (3) All orders signed by the state judge;

No responsive documents were provided by the State Court.

- (4) The docket sheet;

No responsive documents were provided by the State Court.

- (5) An index of matters being filed; and

See Index of Exhibits to Defendant Tyson Foods, Inc.'s Notice of Removal.

- (6) A list of all counsel of record including addresses, telephone numbers and parties represented.

Roger A. Sullivan
Email: roger@bstrial.com
BRANN SULLIVAN TRIAL LAWYERS PLLC
602 Sawyer, Suite 700
Houston, Texas 77007
Telephone: 713.278.7425
Facsimile: 713.510.1883
Counsel for Plaintiff

Zach T. Mayer
Email: zmayer@krcl.com
Brian J. Fisher
Email: bfisher@krcl.com
KANE RUSSELL COLEMAN LOGAN PC
1601 Elm Street, Suite 3700
Dallas, Texas 75201
Telephone: 214.777.4200
Facsimile: 214.777.4299
- and -

Andrew J. Mihalick
Email: amihalick@krcl.com
KANE RUSSELL COLEMAN LOGAN PC
Galleria Tower II
5051 Westheimer Road, 10th Floor
Houston, Texas 77056
Telephone: 713.425.7400
Facsimile: 214.425.7700
Counsel for Defendants

EXHIBIT 1

Received and E-Filed for Record
2/8/2018 8:00 AM
Barbara Gladden Adamick
District Clerk
Montgomery County, Texas

NON-RESIDENT CITATION

Cause Number: 18-01-00689

49274-2

CLERK OF THE COURT
Barbara Gladden Adamick
P.O. BOX 2985
CONROE, TEXAS 77305

ATTORNEY REQUESTING THIS SERVICE

Roger A. Sullivan
602 Sawyer, Suite 700
Houston TX 77007

THE STATE OF TEXAS

NOTICE TO RESPONDENT: "You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

To: Tyson Foods, Inc.
Registered Agent CT Corporation System
1999 Bryan St
Suite 900
Dallas TX 75201

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants at or before 10:00 a.m. of the Monday next after the expiration of twenty days after the date of service of this citation before the 284th Judicial District Court at the Courthouse of said County in Conroe, Texas.

Said Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants was filed in said court on this the 18th day of January, 2018, in this case, numbered 18-01-00689 on the docket of said court, and styled,

Brenda White-Wilkerson VS. Byron Anthony, Tyson Foods, Inc.

The nature of plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Conroe, Texas on this the 23rd day of January, 2018.

Barbara Gladden Adamick, District Clerk
Montgomery County, Texas

By: Sonya Sanford
Sonya Sanford, Deputy

"Certified as to certification
on signature page"

OFFICER'S RETURN

Cause No: 18-01-00689

Court No: 284th Judicial District Court

Style: Brenda White-Wilkerson VS. Byron Anthony, Tyson Foods, Inc.

TO: Tyson Foods, Inc.

Address for Service: Registered Agent CT Corporation System

1999 Bryan St

Suite 900

Dallas TX 75201

Came to hand the 30 day of JANUARY, 2018, at 8:22 AM o'clock, and executed in DALLAS County, Texas by delivering to each of the within named defendants in person, a true copy of this citation with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants, at the following times and places, to wit:

Name	Date/Time	Place, Course and distance from Courthouse
Tyson Foods, Inc.	JAN 30/12:33	1999 BRYAN STREET DALLAS, TX
CT Corp		

Manner of service:

*And not executed as to the defendants(s) N/AThe diligence used in finding said defendant(s) being: N/AAnd the cause of failure to execute this process is: N/AAnd information received as to the whereabouts of said defendant(s) being: N/A

FEES:

Serving Petition and Copy

TOTAL

\$ N/A\$ N/A

OFFICER

By: DALLAS County, Texas

Deputy

AFFIANT

Complete if you are a person other than a Sheriff, Constable, or Clerk of the Court. In accordance with Rule 107: the officer, or authorized person who services, or attempts to serve a citation shall sign and return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

My full name is Stella Shepherd my date of birth is 06/19/2018 and my address is 3704 WASHINGTON AVE #C Northbrook, IL 76107

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Executed in DALLAS County, State of TX, on the 30 day ofJANUARY 2018.

I, Barbara Gladden Adamiek, do hereby Certify, 2 pages in Cause # 180100689 as being a true and correct copy of the Original Record now on file in the District Clerk's Office of Montgomery County, Texas.

Witness My Official Seal of Office in Conroe, Texas

On This the 27 Day of Feb. 2018By: Andrea Dager Deputy

Declarant/Authorized Process Server

12714 October 30, 2020
 ID# & Exp. Of Certification

"Certified as to certification on signature page"

NON-RESIDENT CITATION

Cause Number: 18-01-00689

CLERK OF THE COURT

Barbara Gladden Adamick
P.O. BOX 2985
CONROE, TEXAS 77305

ATTORNEY REQUESTING THIS SERVICE

Roger A. Sullivan
602 Sawyer, Suite 700
Houston TX 77007

THE STATE OF TEXAS

NOTICE TO RESPONDENT: "You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

To: Tyson Foods, Inc.
Registered Agent CT Corporation System
1999 Bryan St
Suite 900
Dallas TX 75201

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants at or before 10:00 a.m. of the Monday next after the expiration of twenty days after the date of service of this citation before the 284th Judicial District Court at the Courthouse of said County in Conroe, Texas.

Said Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants was filed in said court on this the 18th day of January, 2018, in this case, numbered 18-01-00689 on the docket of said court, and styled,

Brenda White-Wilkerson VS. Byron Anthony, Tyson Foods, Inc.

The nature of plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Conroe, Texas on this the 23rd day of January, 2018

Barbara Gladden Adamick, District Clerk
Montgomery County, Texas

By: _____

Sonya Sanford, Deputy

I, Barbara Gladden Adamick, do hereby
Certify 2 pages in Cause # 180100689
as being a true and correct copy of the
Original Record now on file in the District
Clerk's Office of Montgomery County, Texas.
Witness My Official Seal of Office in Conroe, Texas
On This the 27 Day of Feb. 2018
By: Andrea Dager, Deputy

"Certified as to certification
on signature page"

OFFICER'S RETURN

Cause No: 18-01-00689

Court No: 284th Judicial District Court

Style: Brenda White-Wilkerson VS. Byron Anthony, Tyson Foods, Inc.

TO: Tyson Foods, Inc.

Address for Service: Registered Agent CT Corporation System

1999 Bryan St

Suite 900

Dallas TX 75201

Came to hand the ___ day of ___, 20___, at ___ o'clock, and executed in ___ County, Texas by delivering to each of the within named defendants in person, a true copy of this citation with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants, at the following times and places, to wit:

Name	Date/Time	Place, Course and distance from Courthouse
_____	_____	_____

Manner of service: _____

*And not executed as to the defendants(s) _____

The diligence used in finding said defendant(s) being: _____

And the cause of failure to execute this process is: _____

And information received as to the whereabouts of said defendant(s) being: _____

FEES:

Serving Petition and Copy

\$ _____

TOTAL

\$ _____

OFFICER

_____, County, Texas

By: _____, Deputy

AFFIANT

Complete if you are a person other than a Sheriff, Constable, or Clerk of the Court. In accordance with Rule 107: the officer, or authorized person who services, or attempts to serve a citation shall sign and return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

My full name is _____ my date of birth is ___/___/___, and my address is _____.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Executed in _____, County, State of _____, on the ___ day of _____, 20___.

Declarant/Authorized Process Server

ID# & Exp. Of Certification

"Certified as to certification on signature page"

NON-RESIDENT CITATION

Cause Number: 18-01-00689

CLERK OF THE COURT

Barbara Gladden Adamick
P.O. BOX 2985
CONROE, TEXAS 77305

ATTORNEY REQUESTING THIS SERVICE

Roger A. Sullivan
602 Sawyer, Suite 700
Houston TX 77007

THE STATE OF TEXAS

NOTICE TO RESPONDENT: "You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

To: Byron Anthony
1306 N Chalmers
Apt 32
Altus OK 73521

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants at or before 10:00 a.m. of the Monday next after the expiration of twenty days after the date of service of this citation before the 284th Judicial District Court at the Courthouse of said County in Conroe, Texas.

Said Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants was filed in said court on this the 18th day of January, 2018, in this case, numbered 18-01-00689 on the docket of said court, and styled,

Brenda White-Wilkerson VS. Byron Anthony, Tyson Foods, Inc.

The nature of plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Conroe, Texas on this the 23rd day of January, 2018

Barbara Gladden Adamick, District Clerk
Montgomery County, Texas

By user:SS
Issued 01/23/2018 16:22:02

By: _____
Sonya Sanford, Deputy

I, Barbara Gladden Adamick, do hereby
Certify 2 pages in Cause # 18-01-00689
as being a true and correct copy of the
Original Record now on file in the District
Clerk's Office of Montgomery County, Texas
Witness My Official Seal of Office in Conroe, Texas
On This the 27 Day of Feb, 2018
By: Sonya Sanford Deputy

"Certified as to certification
on signature page"

OFFICER'S RETURN

Cause No: 18-01-00689

Court No: 284th Judicial District Court

Style: Brenda White-Wilkerson VS. Byron Anthony, Tyson Foods, Inc.

TO: Byron Anthony

Address for Service: 1306 N Chalmers

Apt 32

Altus OK 73521

Came to hand the ____ day of _____, 20____, at _____ o'clock, and executed in _____ County, Texas by delivering to each of the within named defendants in person, a true copy of this citation with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants, at the following times and places, to wit:

Name	Date/Time	Place, Course and distance from Courthouse
_____	_____	_____

Manner of service: _____

*And not executed as to the defendant(s) _____

The diligence used in finding said defendant(s) being: _____

And the cause of failure to execute this process is: _____

And information received as to the whereabouts of said defendant(s) being: _____

FEES:

Serving Petition and Copy \$ _____

TOTAL \$ _____

OFFICER

_____, County, Texas

By: _____, Deputy

AFFIANT

Complete if you are a person other than a Sheriff, Constable, or Clerk of the Court. In accordance with Rule 107: the officer, or authorized person who services, or attempts to serve a citation shall sign and return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

My full name is _____ my date of birth is ____ / ____ / ____, and my address is _____.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Executed in _____, County, State of _____, on the ____ day of _____, 20____.

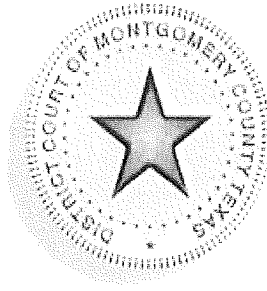
Declarant/Authorized Process Server

ID# & Exp. Of Certification

"Certified as to certification on signature page"

EXHIBIT 2

OFFICIAL RECEIPT



Barbara Gladden Adamick
 Montgomery County District Clerk
 Po Box 2985
 Conroe, Tx 77305
 (936)-539-7855

Payor
 White-Wilkerson, Brenda

Receipt No.
2018-173273

Transaction Date
 02/28/2018

Description	Amount Paid
White-Wilkerson, Brenda	
18-01-00689	
Brenda White-Wilkerson VS. Byron Anthony, Tyson Foods, Inc.	
Certified Copies	23.00
Certified Copies	23.00
SUBTOTAL	23.00
Remaining Balance Due: \$0.00	

PAYMENT TOTAL **23.00**

Check (Ref #106122) Tendered	23.00
Total Tendered	23.00
Change	0.00

cert copies

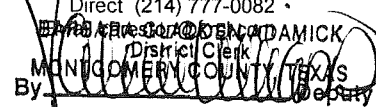
02/28/2018
 09:17 AM

Cashier
 Station DCR2

Audit
 6418754

OFFICIAL RECEIPT

KANE RUSSELL
COLEMAN LOGAN

RECEIVED AND FILED
FOR RECORD
A. 12:00 P. M.
FEB 26 2018
CATHY PRESTON, PARALEGAL
Direct (214) 777-0082
BARBARA GLADDEN ADAMICK
District Clerk
MONTGOMERY COUNTY, TEXAS
By: 

February 22, 2018

VIA -OVERNIGHT MAIL

District Clerk - Records
Barbara Gladden Adamick
Montgomery County District Clerk
PO Box 2985
Conroe, TX 77305

Re: ***Brenda White-Wilkerson v. Byron Anthony and Tyson Foods, Inc.***
Cause No: 18-01-00689
Court: In the 284th Judicial District Court, Montgomery Co., Texas
Our File No.: 58140.00175.000

Dear Clerk:

Please provide a **certified copy** of the entire court file including the docket sheet (even if blank) in the above-referenced matter.

I understand that there are 23 pages. Pursuant to my telephone conference with the Clerk, our fee is \$23.00 for the certified copy.

Please return the certified copy in the enclosed, self-addressed return envelope (~~Priority~~ Mail). *EXPRESS*

Your prompt attention to this matter is greatly appreciated. We have a removal deadline to federal court of March 1, 2017.

In case you have any questions or require additional information, please do not hesitate to give me a call. Thank you for your cooperation and assistance in this matter.

Sincerely,

KANE RUSSELL COLEMAN LOGAN PC

By: *Cathy Preston*

Cathy Preston, Paralegal to Brian Fisher

Dallas
1601 Elm Street
Suite 3700
Dallas, Texas 75201
214.777.4200

Houston
5051 Westheim
Suite 1000
Houston, Texas
713.425.7400

Thank you!

CAUSE NO. 18-01-00689

BRENDA WHITE-WILKERSON,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	MONTGOMERY COUNTY, TEXAS
	§	
BYRON ANTHONY AND TYSON	§	
FOODS, INC.,	§	
	§	
<i>Defendants.</i>	§	284 TH JUDICIAL DISTRICT

**DEFENDANTS BYRON ANTHONY AND
TYSON FOODS, INC.'S ORIGINAL ANSWER**

Defendants, Byron Anthony ("Anthony") and Tyson Foods, Inc. ("Tyson") (collectively referred to as "Defendants"), file their Original Answer and state the following:

**I.
GENERAL DENIAL**

1. Defendants deny each and every, all and singular, the material allegations contained within the Original Petition filed by Plaintiff, Brenda White-Wilkerson ("Plaintiff"), and demand strict proof thereof.

**II.
SPECIAL EXCEPTIONS**

2. Defendants specially except to *Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants* in its entirety because Plaintiff has pled for the recovery of monetary damages but has failed to

specify the total amount of damages which they seek to recover pursuant to the specific requirements of Texas Rule of Civil Procedure 47(c). Further, a party that fails to comply with Rule 47(c) may not conduct discovery until the party's pleading is amended to comply. Defendants requests that, after notice and hearing, the Court sustains this special exception and order Plaintiff to re-plead and identify with specificity the total amount of damages in accordance with Rule 47(c). Should Plaintiff refuse or fail to cure this defect, Defendant prays the Court will strike *Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants* in its entirety.

3. Defendants specially except to Sections V, VI, VII, VIII, IX, X, and XII of *Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants*. Plaintiff seeks unliquidated damages but have not stated a maximum amount in accordance with Rule 47(c). Defendants request that, after notice and hearing, the Court sustain this special exception and order Plaintiffs to re-plead. Should Plaintiff refuse or fail to cure this defect, Defendants pray the Court will strike Sections V, VI, VII, VIII, IX, X, and XII entitled Relief of *Plaintiff's Original Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants*.

**III.
AFFIRMATIVE DEFENSES**

4. Pleading further, alternatively, and by way of affirmative Defense, Defendants assert that Plaintiff's claim is barred by the statute of limitations.

5. Pleading further, alternatively, and by way of affirmative defense, Defendants assert that any damages sought to be recovered by Plaintiff should be reduced to the extent that Plaintiff has failed to take the reasonable steps that a person of ordinary prudence in a similar situation would have taken to avoid the claimed damages.

6. Pleading further, alternatively, and by way of affirmative defense, Defendants assert that in the unlikely event that an adverse judgment would be rendered against them, Defendants would respectfully request all available credits and/or offsets as provided by the Texas Civil Practice and Remedies Code and under Texas law.

7. Pleading further, alternatively, and by way of affirmative defense, Defendants assert that Plaintiff engaged in acts, including acts of negligence, which caused Plaintiff's damages. Therefore, Plaintiff is barred, in whole or in part, from a recovery of damages from Tyson.

8. Pleading further, alternatively, and by way of affirmative defense, Defendants assert that other parties may have caused the Plaintiff's injuries. If such is established, Defendants' liability must be reduced accordingly, and if Defendants are found to be jointly and severally liable, Defendants are entitled to a judgment for contribution from other Defendants.

9. Pleading further, alternatively, and by way of affirmative defense, Defendants assert that Plaintiff's damages, if any, were solely caused by the conduct of other parties or, alternatively, that the conduct of other parties was an intervening cause of Plaintiff's claimed damages. Therefore, Defendants are not liable for such damages.

10. Pleading further, alternatively, and by way of affirmative defense, Defendants assert that Plaintiff assumed the risk associated with engaging in the activity associated with the incident made the basis of this lawsuit. Plaintiff should therefore be barred from recovery of damages against Defendants.

11. Pleading further, alternatively, and by way of affirmative defense, Defendants assert that in addition to any other limitation under law, Plaintiff's recovery of medical or health care expenses be limited to the amount actually paid or incurred by or on behalf of Plaintiff, pursuant to Section 41.0105 of the Texas Civil Practices and Remedies Code.

12. Pleading further, alternatively, and by way of affirmative defense, Defendants assert that pursuant to the Patient Protection and Affordable Care Act ("ACA") and common-law, Plaintiff has a duty to mitigate the amount of future damages for medical care by purchasing a health insurance policy no later than March 31, 2014 in accordance with the Individual Mandate prescribed in 26 U.S.C. § 5003A *et. seq.* Further, Defendants' potential liability for future medical care should be limited to the amounts not covered under the ACA for co-pays and deductibles. In the alternative, if Plaintiff has purchased a health insurance policy

pursuant to the Individual Mandate, Plaintiff's future medical expenses should be limited to the amount the ACA will actually pay for medical expenses and not the full retail cost of future medical care.

13. Defendants hereby give notice that they intend to rely upon such other defenses or denials, affirmative or otherwise, and to assert third-party claims and any other claims, as may become available or appear during discovery as it proceeds in this matter, and hereby reserve the right to amend their Answer to assert such defenses.

IV. JURY DEMAND

14. In accordance with Rule 216 of the Texas Rules of Civil Procedure, Defendants demand a trial by jury.

V. PRAYER

15. Defendants Byron Anthony and Tyson Foods, Inc., pray that Plaintiff take nothing by this suit, that Defendants go hence with their costs without delay, and for such other and further relief, both general and special, at law and in equity, to which Defendants may show themselves justly entitled.

Respectfully submitted,

By: /s/ Zach T. Mayer
Zach T. Mayer
State Bar No. 24013118
zmayer@krcl.com
Brian J. Fisher
State Bar No. 24032178
bfisher@krcl.com

KANE RUSSELL COLEMAN LOGAN PC
1601 Elm Street, Suite 3700
Dallas, Texas 75201
Telephone: 214.777.4200
Facsimile: 214.777.4299

Andrew J. Mihalick
State Bar No. 24046439
amihalick@krcl.com

KANE RUSSELL COLEMAN LOGAN PC
Galleria Tower II
5051 Westheimer Road, 10th Floor
Houston, Texas 77056
Telephone: 713.425.7400
Facsimile: 713.425.7700

**ATTORNEYS FOR DEFENDANTS
BYRON ANTHONY AND TYSON
FOODS, INC.**

I, Barbara Gladden Adamick, do hereby
Certify 7 pages in Cause # 1801 00689
as being a true and correct copy of the
Original Record now on file in the District
Clerk's Office of Montgomery County, Texas.
Witness My Official Seal of Office in Conroe, Texas
On This the 27 Day of Feb. 2018
By: Barbara Gladden Adamick, Deputy

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of February 2018, a true and correct copy of the foregoing has been forwarded to all counsel of record, as follows:

Via eFileTexas.gov

Via Email: roger@bstrial.com

Roger A. Sullivan

BRANN SULLIVAN TRIAL LAWYERS, PLLC

602 Sawyer, Suite 700

Houston, Texas 77007

/s/ Zach T. Mayer

Zach T. Mayer

KANE RUSSELL
COLEMAN LOGAN

February 20, 2018

Via Efile

Via Email: roger@bstrial.com

ROGER A. SULLIVAN
Brann Sullivan Trial Lawyers, PLLC
602 Sawyer, Suite 700
Houston, Texas 77007

Re: ***Brenda White-Wilkerson v. Byron Anthony and Tyson Foods, Inc.***
Cause No: 18-01-00689
Court: In the 284th Judicial District Court, Montgomery Co., Texas
Our File No.: 58140.00175.000

Dear Counsel:

Attached please find ***Defendants Byron Anthony and Tyson Foods, Inc.'s Original Answer***, which was e-filed today in the 284th Judicial District Court, Montgomery County, Texas, in the above-referenced matter.

In case you have any questions or require additional information, please do not hesitate to contact Brian J. Fisher at 214-777-4240 or bfisher@krcl.com and Andrew J. Mihalick at (713) 425-7438 or amihalick@krcl.com. Thank you for your cooperation and assistance in this matter.

Very truly yours,
KANE RUSSELL COLEMAN LOGAN PC


By: _____


Zachary T. Mayer

ZTM/smp
Attachment

Dallas
1601 Elm Street
Suite 3700
Dallas, Texas 75201
214.777.4200

Houston
5051 Westheimer Road
Suite 1000
Houston, Texas 77056
713.425.7400

I, Barbara Gladden Adamick, do hereby
Certify 1 pages in Cause # 18-01-00689
as being a true and correct copy of the
Original Record now on file in the District
Clerk's Office of Montgomery County, Texas
Witness My Official Seal of Office in Conroe, Texas
On This the 22 Day of Feb. 2018
By:  Deputy

5944067v1(58140.00175.000)

Received and E-Filed for Record
1/18/2018 8:00 AM
Barbara Gladden Adamick
District Clerk
Montgomery County, Texas

CAUSE NO. 18-01-00689

BRENDA WHITE-WILKERSON;

Plaintiff,

VS.

**BYRON ANTHONY AND TYSON
FOODS, INC.;**

Defendants

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§
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§
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§
§

IN THE DISTRICT COURT OF

MONTGOMERY COUNTY, TEXAS

Montgomery County - 284th Judicial District Court

 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE, FIRST SET
OF INTERROGATORIES, FIRST REQUEST FOR ADMISSIONS, FIRST REQUEST
FOR PRODUCTION AND REQUEST FOR PRIVILEGE LOG TO DEFENDANTS**

TO THE HONORABLE COURT:

COMES NOW Brenda White-Wilkerson, hereinafter called "Plaintiff" complaining of Byron Anthony and Tyson Foods, Inc. hereinafter called "Defendants," and respectfully shows the Honorable Court and Jury as follows:

I.

DISCOVERY CONTROL PLAN

Discovery is intended to be conducted under Level 3, pursuant to Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

II.

REMOVAL FROM EXPEDITED TRIAL RULE

As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff's counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil Procedure, Plaintiff's counsel states that Plaintiff seeks monetary relief of over \$500,000.00. The amount of

monetary relief actually awarded, however, will ultimately be determined by a jury. Plaintiff also seeks pre-judgment and post-judgment interest at the highest legal rate.

III.

PARTIES

Plaintiff Brenda White-Wilkerson is an individual resident of Houston, Texas. Her Texas driver's license number is *****153 and his social security number is ***-**-088.

Defendant Byron Anthony is an individual resident of Altus, Oklahoma and may be served with process at 1306 N. Chalmers, Apt. 32, Altus, Oklahoma, 73521 or wherever he may be found.

Defendant Defendant, Tyson Foods, Inc. is a foreign corporation authorized to do business in the State of Texas and may be served with process by serving its registered agent for service of process, CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

IV.

JURISDICTION AND VENUE

The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of this Honorable Court.

This Court has venue over the parties to this action since the incident complained of herein occurred in Montgomery County, Texas. Venue therefore, is proper in Montgomery County, Texas pursuant to the TEXAS CIVIL PRACTICE & REMEDIES CODE §15.002.

V.

FACTS

This lawsuit arises out of a motor vehicle collision that occurred on January 16, 2016 on the northbound entrance ramp of IH-45 near Longstreet Road in Willis, Montgomery County, Texas. At the time, Plaintiff was a passenger in a vehicle being driven by her husband, Eddie Wilkerson. At the time, Plaintiff's vehicle was on the entrance ramp of IH-45 in the lane directly behind an 18-wheeler driven by Defendant, Byron Anthony and owned by Defendant, Tyson Foods, Inc. Plaintiff's vehicle was stopped. Defendant, Byron Anthony backed his 18-wheeler into the vehicle in which Plaintiff was a passenger. As a result of the collision, Plaintiff was injured and continues to suffer injuries and damages from this incident.

VI.

CAUSES OF ACTION

A. NEGLIGENCE—BYRON ANTHONY

At the time of the motor vehicle collision, Defendant Byron Anthony was operating his vehicle negligently. Specifically, Defendant, Byron Anthony, had a duty to exercise ordinary care and operate his vehicle reasonably and prudently. Defendant breached that duty in one or more of the following respects:

1. Defendant failed to keep such proper lookout and attention to the roadway as a person of ordinary prudence would have kept under the same or similar circumstances;
2. Defendant backed when unsafe;
3. Defendant failed to maintain the legal direction of travel;

4. Defendant failed to timely apply his brakes;
5. Defendant failed to keep an assured safe distance from Plaintiff's vehicle;
6. Defendant failed to turn his vehicle in an effort to avoid the collision.

Each of the above and foregoing acts and omissions, singularly or in combination, constituted the negligence that was the proximate cause of the motor vehicle collision and consequently the injuries and damages of Plaintiff.

B. NEGLIGENT ENTRUSTMENT –TYSON FOODS, INC.

At the time and on the occasion in question, Defendant Tyson Foods, Inc. was the owner of the vehicle driven by Defendant Byron Anthony. Defendant Tyson Foods, Inc. negligently entrusted the vehicle to Defendant Byron Anthony in that they knew or should have known that the Defendant, Byron Anthony, was a negligent, incompetent, and/or reckless driver.

C. RESPONDEAT SUPERIOR –TYSON FOODS, INC.

Additionally, Plaintiff will show that at the time and on the occasion complained of, Defendant Byron Anthony was in the course and scope of his employment with Defendant Tyson Foods, Inc. thereby making this Defendant liable under the theory of *Respondeat Superior*.

In the alternative, Plaintiff would show that at the time and on the occasion complained of, Defendant, Byron Anthony was operating the subject vehicle in furtherance of a mission for the benefit of this Defendant and subject to control by this defendant.

At all times hereto, this defendant (1) had an agreement, either express or implied with respect to the activities of Byron Anthony, (2) had a common purpose with

respect to the activities of Byron Anthony, (3) had a common business or pecuniary interest with respect to the activities of Byron Anthony, and (4) had an equal right to a voice in the direction of the enterprise and thus gave each an equal right of control with respect to the activities of Byron Anthony.

VII.

DAMAGES

As a proximate result of Defendants' negligence, Plaintiff suffered extensive injuries and damages. As a result of Plaintiff's injuries, Plaintiff suffered the following damages:

- a. Medical expenses in the past and future;
- b. Lost wages/earnings in the past and future;
- c. Physical pain and suffering in the past and future;
- d. Mental anguish in the past and future; and
- e. Physical impairment in the past and future.

VIII.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a)-(l).

IX.

DISCOVERY DOCUMENTS

Contemporaneously with this petition, Plaintiff serves to Defendants:

1. Plaintiff's First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendant Byron Anthony;
2. Plaintiff's First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendant, Tyson Foods, Inc.

X.

INTENT TO USE DEFENDANTS' DOCUMENTS

Plaintiff hereby gives notice of intent to utilize items produced in discovery against the party producing same. The authenticity of such items is self-proven per TRCP 193.7.

XI.

JURY TRIAL

Plaintiff demands a trial by jury and includes the appropriate jury fees.

XII.

U.S. LIFE TABLES

Notice is hereby given to the Defendants that Plaintiff intends to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

XIII.

RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein, and that upon final hearing thereof, Plaintiff recover judgment against Defendants for:

1. Plaintiff's past medical expenses, which are reasonable and customary for the medical care received by Plaintiff;

2. Plaintiff's future medical expenses;
3. Plaintiff's lost wages in the past and loss of earning capacity in the future;
4. Plaintiff's physical pain and suffering in the past and future in an amount to be determined by the jury;
5. Plaintiff's mental anguish in the past and future in an amount to be determined by the jury;
6. Plaintiff's physical impairment in the past and future in an amount to be determined by the jury;
7. Interest on the judgment at the legal rate from the date of judgment;
8. Pre-judgment interest on Plaintiff's damages as allowed by law;
9. All costs of court; and
10. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

BRANN SULLIVAN TRIAL LAWYERS PLLC

/s/ Roger A. Sullivan
ROGER A. SULLIVAN
SBN: 24033370
602 Sawyer, Suite 700
Houston, Texas 77007
(713) 278-7425 - Telephone
(713) 510-1883 - Facsimile
roger@bstrial.com

ATTORNEYS FOR PLAINTIFF

I, Barbara Gladden Adamick, do hereby
Certify 7 pages in Cause # 180100689
as being a true and correct copy of the
Original Record now on file in the District
Clerk's Office of Montgomery County, Texas.

Witness My Official Seal of Office in Conroe, Texas

On This the 27 Day of Feb, 2018

By: Barbara Gladden Adamick, Deputy

Montgomery County - 284th Judicial District Court

CIVIL CASE INFORMATION SHEET

Received and E-Filed for Record

1/18/2018 8:00 AM

Barbara Gladden Adamick

District Clerk

Montgomery County, Texas

CAUSE NUMBER (FOR CLERK USE ONLY): 18-01-00689

COURT (FOR CLERK USE ONLY):

STYLED **BRENDA WHITE-WILKERSON VS BYRON ANTHONY AND TYSON FOODS, INC.**

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: <u>ROGER A. SULLIVAN</u> Email: <u>roger@bstrial.com</u> Address: <u>Brann Sullivan Trial Lawyers</u> Telephone: <u>713-278-7425</u> <u>602 Sawyer Suite 700</u> City/State/Zip: <u>713-510-1883</u> <u>Houston, Texas 77007</u> Signature: <u>24033370</u> <u>/s/ Roger A. Sullivan</u>		Names of parties in case: Plaintiff(s)/Petitioner(s): <u>Brenda White-Wilkerson</u> Defendant(s)/Respondent(s): <u>Byron Anthony</u> <u>Tyson Foods, Inc.</u> [Attach additional page as necessary to list all parties]		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____					
2. Indicate case type, or identify the most important issue in the case (select only 1):									
Civil			Family Law						
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____		Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input checked="" type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____		Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____		Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____		Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____							
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____							
3. Indicate procedure or remedy, if applicable (may select more than 1):									
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover					
4. Indicate damages sought (do no select if it is a family law case):									
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input checked="" type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000									

Received and E-Filed for Record
1/18/2018 8:00 AM
Barbara Gladden Adamick
District Clerk
Montgomery County, Texas

CIVIL PROCESS REQUEST FORM

(Please use this form for all service requests made to the Montgomery County District Clerk)

Cause No.: 18-01-00689Court: Montgomery County - 284th Judicial District Court**Service to be issued to as follows:**

(Please enter the names of the parties to be served and the locations for service as you wish it to be printed on the service documents.)

1. Name: Byron Anthony
Agent: _____
Address: 1306 N. Chalmers, Apt. 32
City: Altus State: Oklahoma Zip: 73521

☐ Check here to have your citation addressed to the recipient wherever he or she may be found.**Method of service (please choose how the recipient will be served):**

- | | |
|---|---|
| <input checked="" type="checkbox"/> Service by Constable or Process Server** | <input type="checkbox"/> Publication/Posting |
| <input type="checkbox"/> Certified Mail by District Clerk with Restricted Delivery* | <input type="checkbox"/> Certified Mail by District Clerk* |
| <input type="checkbox"/> Registered Mail by District Clerk (for service outside of the U.S.)* | <input type="checkbox"/> Regular Mail* |
| <input type="checkbox"/> Foreign Judgment Notice (UCCJEA) by Certified Mail* | <input type="checkbox"/> Secretary of State (or other citations which require 2 copies are \$12.00) |
| <input type="checkbox"/> Foreign Judgment Notice (UIFSA) by Regular U.S. Mail* | |

2. Name: Tyson Foods, Inc.
Agent: CT Corporation System
Address: 1999 Bryan Street, Suite 900
City: Dallas State: Tx Zip: 75201

☐ Check here to have your citation addressed to the recipient wherever he or she may be found.**Method of service (please choose how the recipient will be served):**

- | | |
|---|---|
| <input checked="" type="checkbox"/> Service by Constable or Process Server** | <input type="checkbox"/> Publication/Posting |
| <input type="checkbox"/> Certified Mail by District Clerk with Restricted Delivery* | <input type="checkbox"/> Certified Mail by District Clerk* |
| <input type="checkbox"/> Registered Mail by District Clerk (for service outside of the U.S.)* | <input type="checkbox"/> Regular Mail* |
| <input type="checkbox"/> Foreign Judgment Notice (UCCJEA) by Certified Mail* | <input type="checkbox"/> Secretary of State (or other citations which require 2 copies - \$12.00) |
| <input type="checkbox"/> Foreign Judgment Notice (UIFSA) by Regular U.S. Mail* | |

Instrument(s) to be served (name the documents/filings you want served on the above recipients):Plaintiff's Original Petition and Discovery to Defendants**Type of Process to be Issued:**

- | | |
|---|--|
| <input checked="" type="checkbox"/> Citation | <input type="checkbox"/> Writ |
| <input type="checkbox"/> Notice of Foreign Judgment (please specify type under Method of Service) | <input type="checkbox"/> Subpoena (you must provide the Subpoena to be issued, along with this form) |
| <input type="checkbox"/> Temporary Ex Parte Protective Order/Notice of Application for Protective Order | <input type="checkbox"/> Civil Temporary Restraining Order or Writ of Sequestration*** |

*If service is to be by certified or registered mail, you must provide correct copies for service either by paying the District Clerk to print them at \$1/page, or in paper form. If you provide paper service copies, they must be complete with Cause Number, Court Designation, and Clerk's File Stamp.

**If service will be performed by a Constable or Process Server, the District Clerk will return your Citation to you or your process server. You may pay the District Clerk to print copies at \$1/page, or you may attach your own copies before service.

***Bond and bond approval fee must be paid before issuance.

Attorney or Party requesting issuance of service:

Name: Roger A. Sullivan Email Address: roger@bstrial.com
Address: 602 Sawyer, Suite 700, Houston, Texas 77007 Phone: (713) 278-7425

Please indicate how you would like your citations to be returned below:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Mail to Attorney of Record (no postage is required) send via email to: <u>sandra@bstrial.com</u> | <input type="checkbox"/> Mail to Process Server (Server must provide postage paid envelopes.) |
| <input type="checkbox"/> Place in Process Server's box in District Clerk's Office Please indicate name of Server _____ | <input type="checkbox"/> Keep in District Clerk's office and contact attorney for pickup by calling or emailing: _____ |